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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 LEE ALVIN VINCENT,

9 *Petitioner,*

10 vs.

12 E.K. MCDANIEL, *et al.*

13 *Respondents.*
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3:10-cv-00181-HDM-VPC

ORDER

15 This represented habeas matter under 28 U.S.C. § 2254 comes before the Court on
16 petitioner's motion (#25) to reopen the case, motion (#27) for an extension of time to file a
17 second amended petition, and motion (#32) for leave to file a second amended petition.

18 Respondents, in the main, do not oppose the pending motions subject to, *inter alia*, the
19 proviso that they do not thereby waive any extant defenses by virtue of not opposing the
20 interim procedural relief sought.¹ With that proviso, as well as with the proviso that the Court's
21 action does not in and of itself toll any limitation period, the Court will grant the motions.

22 IT THEREFORE IS ORDERED that petitioner's motion (#25) to reopen the case is
23 GRANTED, that the stay is LIFTED, and that this matter hereby is REOPENED.

24 IT FURTHER IS ORDERED that petitioner's motion (#27) for an extension of time to
25 file a second amended petition is GRANTED *nunc pro tunc*, subject to the provisos herein.

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27 ¹ Respondents opposed the motion for an extension, but, subject to the provisos made, respondents
28 did not oppose the motion for leave to amend. To the extent, if any, that respondents continue to oppose the
motion for an extension, the Court is not persuaded that it should deny the motion, subject to the provisos
noted herein.

1 IT FURTHER IS ORDERED that petitioner's motion (#32) for leave to file a second
 2 amended petition is GRANTED, also subject to the provisos herein, and the Clerk of Court
 3 shall file the second amended petition.

4 IT FURTHER IS ORDERED that, within **sixty (60) days** of entry of this order,
 5 respondents shall file a response to the second amended petition. **Any response filed shall**
 6 **comply with the remaining provisions below, which are tailored to this particular case**
 7 **based upon the Court's screening of the matter and which are entered pursuant to**
 8 **Habeas Rule 4.**

9 IT FURTHER IS ORDERED that any procedural defenses raised by respondents in this
 10 case shall be raised together in a single consolidated motion to dismiss. In other words, the
 11 Court does not wish to address any procedural defenses raised herein following the
 12 reopening of the matter either in *seriatum* fashion in multiple successive motions to dismiss
 13 or embedded in the answer. Procedural defenses omitted from such motion to dismiss will
 14 be subject to potential waiver. Respondents shall not file a response in this case that
 15 consolidates their procedural defenses, if any, with their response on the merits, except
 16 pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
 17 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do
 18 so within the single motion to dismiss **not** in the answer; and (b) they shall specifically direct
 19 their argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*,
 20 406 F.3d 614, 623-24 (9th Cir. 2005).

21 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents shall
 22 specifically cite to and address the applicable state court written decision and state court
 23 record materials, if any, regarding each claim within the response as to that claim.

24 IT FURTHER IS ORDERED that petitioner shall have **thirty (30) days** from service of
 25 the response within which to file an opposition or reply as applicable.²

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 28 ²The filing of a motion to substitute respondent may be warranted. The Ely State Prison warden has changed, and petitioner in any event perhaps may be housed now at a different facility.

DATED: August 6, 2014.

Howard D McKibbin

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